

APPEAL FROM ORDER NO. 359 OF 1997.
with
CIVIL APPLICATION No 6761 of 1997

Date of decision: September 3, 1997.

For approval and signature

The Honourable Mr. Justice M. S. Shah

Mr. B.D. Karia, advocate for the appellant.
Mr. A.J. Patel, advocate for the respondents.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: M. S. Shah, J.

September 3, 1997.

C.A.V. Judgment:

With the consent of the learned counsel for the parties, the appeal was taken up for final disposal and was heard at length on August 6 and 7, 1997.

2. This appeal is directed against the order dated June 26, 1997 passed by the learned 3rd Joint Civil Judge (S.D.), Surat, rejecting the interim injunction Application filed by the appellant/defendant in Regular

Civil Suit No. 818/96 for restraining the plaintiffs from obstructing the defendant in putting up construction on the suit land admeasuring 15' x 30'. Although technically the appeal is filed only by the original defendant against rejection of his aforesaid application, by consent of parties, this matter is also treated as if the original plaintiffs have also filed appeal against the aforesaid common order dated June 26, 1997 rejecting application Ex.5 filed by the original plaintiffs seeking interim injunction to restrain the defendant from putting up construction on the suit land.

3. The suit is filed by the respondents/plaintiffs contending that they are owners of land admeasuring about 3308 sq.mt. in Surat out of which land admeasuring 15 ft. x 30 ft. was let out by the plaintiffs to the defendant and the defendant had constructed two rooms admeasuring 14 ft. x 12 ft. each, aggregating to 336 sq.ft. for running a shop in the name and style "Janta Farsan Mart". Another adjoining parcel of land admeasuring 15 ft. x 30 ft. was given to the defendant as appurtenant land. In May 1995 the Surat Municipal Corporation gave a notice for removing the aforesaid construction and acquiring the land admeasuring 15 ft. x 30 ft. having the aforesaid shop thereon for the purpose of widening the road as per the Town Planning Scheme. In September 1996, possession of the land admeasuring 15 ft. x 30 ft. having the aforesaid shop thereon was taken over by the Surat Municipal Corporation and the shop was demolished. However, the defendant wanted to put up construction on the appurtenant land of 15 ft. x 30 ft. which still remains of the ownership of the plaintiff-Trust. Hence without consent of the plaintiff-Trust, the defendant cannot put up any construction. Therefore, the plaintiffs filed the present suit for permanent injunction for restraining the defendant from putting up any construction on the aforesaid land admeasuring 15 ft. x 30 ft. and the plaintiffs also prayed for temporary injunction in the aforesaid terms by filing application Ex.5.

4. The defendant filed his written statement contesting the suit and also filed an application for restraining the plaintiffs from obstructing the defendant in putting up construction on the land admeasuring 15 ft. x 30 ft., as the defendants contended that the land in question was a part of the property belonging to the Union of India in the Defence Department and not to the plaintiff-Trust and the defendant was paying rent to the said authority, and not to the plaintiff-Trust, since 1989. It is also contended that the Estate Officer of

the Defence Department of the Government of India had already granted permission to the defendant to put up construction on the aforesaid land admeasuring 15 ft. x 30 ft. of which the defendant still remains a tenant after demolition of the old shop and acquisition of the land admeasuring 15 ft x 30 ft. by the Surat Municipal Corporation for widening the road. It was also submitted that the Surat Municipal Corporation had already sanctioned the defendant's plans for putting up construction on the aforesaid land and, therefore, the plaintiffs' application, Ex.5, deserves to be dismissed but defendant's application for interim injunction deserves to be allowed.

5. By her common judgment and order dated June 26, 1997, the learned 3rd Joint Civil Judge (S.D.), Surat has dismissed both the applications, that is, application Ex.5 filed by the plaintiffs as well as application filed by the defendant on the ground of pending litigation in this Court and the interim order passed therein. The present Appeal from order is filed by the defendant against the order rejecting his application for interim injunction. Mr. Patel for the plaintiffs submitted that even the plaintiffs were desirous of challenging the common order in so far as the plaintiffs' application was rejected. With the consent of the learned advocates for the parties, therefore, this matter is also heard as if the original plaintiffs have also filed an appeal challenging the order rejecting their application Ex.5.

6. Before narrating the rival contentions of the parties, it is necessary to refer to a few facts leading to filing of the present suit.

7. The defendant was granted a parcel of land admeasuring 15 ft. x 30 ft. on lease by the plaintiff-Trust for constructing a shop for running business in the name and style "Janta Farsan Mart" in the year 1951. In the year 1964 a formal rent note was executed specifying that the rented premises consisted of land admeasuring 15 ft. x 30 ft. with shop (two rooms) constructed thereon at a monthly rent of Rs.80/-. Thereafter on August 5, 1972, the plaintiff-Trust gave the defendant additional adjoining parcel of land admeasuring 15 ft. x 30 ft. being open space behind the aforesaid shop. Thus the defendant came to be in possession of land admeasuring 30 ft. x 30 ft. and rent was paid at the rate of Rs.95/per month.

The Municipal Corporation gave notice dated May 21, 1995 calling upon the defendant to demolish the above

shop and to handover possession of land admeasuring 15 ft. x 30 ft. on which the shop was standing, for the purpose of widening the road. The possession of the land admeasuring 15 ft. x 30 ft. (on which the shop was standing) was taken over and the shop was demolished by the Corporation and the road was widened in September 1996.

There is no dispute about the aforesaid facts.

8. However, in the meantime, the plaintiffs' title to the property itself was shaken. The facts stated hereinafter are merely narrated for the purpose of referring to the litigation connected with the title of the plaintiff-Trustees to the land in question and not for the purpose of deciding the same as it is already subject matter of another substantive petition filed by the plaintiff-Trustees under Article 226 of the Constitution being Special Civil Application No. 4437 of 1994 which is pending for final hearing before this Court.

As per the stand of the Union of India in its Defence Department in the above litigation, in view of the provisions of Indian Church Act, 1927 and Indian Church Rules, 1940, the properties especially land on which the church is situate, and the surrounding land are not of the ownership of the plaintiff-Trust managing the Church but ownership of the land vests in the Union of India with effect from April 1, 1948 and the Trustees managing the church are only permitted to maintain and use the church building; a notification to that effect was also published by the Government of India on March 27, 1948. Thereafter an entry showing the Government of India as owner of the property was made in the City Survey Record, on the basis of the resolution passed by the Government of India on January 31, 1961. The said entry was purported to be deleted by order dated July 12, 1971 passed by the City Survey Superintendent upon an objection raised by the plaintiff-Trust. Thereafter the Officer of the Defence Department on behalf of the Government of India submitted that the entry in favour of the Government of India was deleted without giving any opportunity of hearing to the Government and, therefore, the Collector took the order of the City Survey Superintendent in revision and by his order dated April 10, 1978 declared that the entry in favour of the Government of India was deleted without giving any opportunity of hearing to the Government under Section 135-D of the Land Revenue Code and, therefore, the order of the City Survey Superintendent was set aside and the

earlier entry in favour of the Government of India was restored in the property card of the City Survey Record.

The plaintiff-Trust carried the matter in revision before the State Government which examined the provisions of Indian Church Act, 1927 and Indian Church Rules, 1940 and the Notification dated March 27, 1948 and held that with effect from April 1, 1948 the property had vested in the Union of India and that all the trustees of the church have merely right to use and manage the church building but they cannot claim ownership of the land vested in the Union of India. It was also held that prior to independence, the management of such religious properties was with the Defence Department of Union of India for historical reasons and, therefore, the Asst. Estate Officer has been managing the administration of such land on behalf of Union of India in its Defence Department. The revision application was, therefore, dismissed by the State Government on January 30, 1989.

9. In view of the above development, the Collector, Surat, asked for details of lease under which the defendant was occupying the land in question and thereafter from July 1989 the defendant started paying rent to the Union of India, through the Assistant Estate Officer, in the Defence Department at the rate of Rs.95/per month with effect from October 1988.

10. The plaintiff-Trust filed review application against the above order before the State Government in July 1991. That application came to be rejected in March 1993.

11. Thereafter the plaintiff-Trust filed Special Civil Application No. 4437 of 1994 (hereinafter referred to as the 'writ petition') for challenging the above order of the Collector and the revisional order of the State Government. On May 2, 1994, this Court issued notice on the writ petition and passed an ad-interim order directing both the parties to maintain status quo. After hearing the petitioner as well as the respondents, that is, State Government, Collector, City Survey Superintendent and Defence Department in the Government of India this Court confirmed the ad-interim order passed earlier in the following terms:

"Ad-interim relief granted earlier to continue till further orders. The petitioners also will maintain status quo as regards property in question and they will not transfer, assign or alienate or dispose of the property in question

in any manner and will not create any equity over it in case the petitioner is ultimately decided against them and will also not change user of the property in question. An undertaking to the aforesaid effect will be filed by the petitioners before this Court on or before 31st August, 1994, and a copy of such undertaking will be supplied to the otherside."

12. In compliance with the above order, the Hon. Secretary and Director of the plaintiff-Trust also filed an undertaking before this Court. Subsequently, in view of the notice issued by the Surat Municipal Corporation for acquiring land admeasuring 15 ft. x 30 ft. and demolition of the shop thereon, the defendant filed an application for being joined as a party respondent in the above petition and that application came to be granted on October 17, 1995. Thereafter the defendant (respondent No.5 in the writ petition) filed civil application No. 2932 of 1995 submitting that the shop being run by him was going to be demolished because of the implementation of the Town Planning Scheme and, therefore, he may be permitted to put up construction on the rear portion of the existing premises. This Court passed the following order while disposing of the above Civil Application on December 6, 1995:-

"The applicant seeks permission of this court to put up construction on the rear of the premises which are occupied by him on the ground that the front portion is going to be demolished because of the implementation of the Town Planning Scheme. This court cannot grant such permission to construct and it will be for the parties to seek permission from the concerned authorities in accordance with law without disturbing the equities as has been stated in the interim order. This application is disposed off accordingly with no costs."

13. It appears that the defendant thereafter approached the Defence Estate Officer (opponent No.5 in civil application No. 5473 of 1996) for permission to put up construction on the land admeasuring 15 ft. x 30 ft. which was still open land remaining with the defendant even after acquisition of the land with shop (thereafter demolished) by the Surat Municipal Corporation. The defendant was, however, asked to seek clarification as to who is competent authority to give such permission. The defendant, therefore, filed civil

application No. 5373 of 1996 for seeking directions of this Court. After referring to the previous orders, this Court passed the following order on July 9, 1996:

"If permission for the construction is necessary from the Municipal Authority or Town Planning Authority, then those authorities will decide the question as to whether permission should be given or not. If permission of any other statutory authority is required for such construction, then it would be for the concerned parties to take such permission. This Court cannot at this stage decide as to whether the applicant was in possession or as to who is the real owner from amongst the opponents Nos.1 and 5, who both are claiming ownership over the property. Therefore, no modification or clarification is necessary on the application and this application is rejected with no order as to costs. If any permission is granted in accordance with law for construction to any party, then such permission will not affect the rights and contentions of the parties and will be subject to the orders made and to be made in this petition."

14. Thereafter the Assistant Estate Officer in the Defence Department of the Union of India and also the Surat Municipal Corporation granted permission to the defendant to put up construction on the aforesaid vacant land admeasuring 15 ft. x 30 ft., and the defendant filed civil application No. 5015 of 1996 praying that the plaintiff-Trust be restrained from making any obstruction in the way of the defendant putting up construction on the above land admeasuring 15 ft. x 30 ft. At the hearing of the said application, the plaintiff-Trust not merely contested the said application but also submitted that the plaintiff-Trust had already filed civil suit No. 818 of 1996 (the present suit) in the Civil Court at Surat for restraining the defendant herein from making any construction on the land in question and as the plaintiff-Trust had also filed another Civil Suit being Regular Civil Suit No. 940 of 1996 in the same Court, inter alia, praying for a declaration that the permission granted by the Surat Municipal Corporation is not binding on the plaintiff-Trust. The interim injunction applications in the said suits were pending hearing when the aforesaid civil application No. 5015/96 came up for hearing before this Court (Coram: Mr. Justice M.S. Parikh). That civil application ultimately came to be disposed of in the following terms:

"Having heard the learned Advocates for the parties as aforesaid, I am of the opinion that no order is required to be passed in this Civil Application bearing in mind the fact that there is no question of opponent No.1 (plaintiff-Trust) making any obstruction in the way of the applicant (appellant-defendant herein) making construction in the portion of the premises occupied by the applicant since the opponent No.1 has already filed Civil Suits. Besides whatever construction is made would have to be in accordance with the permission which the applicant has been granted and this Court has very clearly stated in the earlier orders that the same would not defeat the equities of the parties. Besides, what has been submitted on behalf of the applicant would also clearly indicate that the construction would be provisional and would be subject to the result of all the proceedings. In view of such a state of affairs with regard to the prayer in this Civil Application this Application is not required to be entertained. However, at this stage Mr. Thakkar, learned Advocate for the applicant seeks to withdraw this application in view of what is observed hereinabove. Permission to withdraw this Application is granted. Disposed of accordingly with no order as to costs."

15. The learned 3rd Joint Civil Judge (S.D.), Surat has rejected both the applications, i.e., Ex.5 filed by the plaintiff-Trust for restraining the defendant from putting up construction on the suit land and the application filed by the defendant for restraining the plaintiff-Trust and its trustees from obstructing the defendant from putting up construction on the suit land on the ground that the writ petition regarding ownership of the entire land is pending before this Court and that the question whether the plaintiffs are the owners or the Government of India is the owner is yet not decided by this Court and that as the order of status quo is operating in the said petition, the injunction as prayed for cannot be granted in favour of or against either of the parties. The trial Court also noted that the plaintiffs had not tried to serve the process on the Government of India.

It is the aforesaid order dated June 26, 1997 which is assailed by the defendant in so far as it has rejected the application filed by the defendant and also

by the plaintiff in so far as the trial court has rejected application Ex.5 filed by the plaintiffs.

16. Mr. A.J. Patel, learned counsel for the plaintiffs has assailed the order of the trial court rejecting plaintiffs' application Ex.5 and has supported the order in so far as it has rejected the application filed by the defendant. He has urged the following contentions:

- (1) The plaintiffs have a strong case and are likely to succeed in Special Civil Application No. 4437 of 1994, as there are various decisions of the Apex Court as well as of this Court taking the view that entries in the revenue records do not confer any title to the property in question and, therefore, the orders of the Collector and the State Government in revision against the plaintiffs do not confer any title on the Union of India.
- (2) This Court has not granted any permission to the defendant to put up any construction in any of the previous orders, although the defendant had approached this Court on three previous occasions, nor has this Court decided as to who is the competent authority to grant any permission to the defendant to put up construction on the land in question. The rent receipts issued by the Government officer are also provisional.
- (3) The above writ petition filed by the plaintiffs is not only admitted by this Court but this Court has also passed interim order directing the parties to maintain status quo and not to disturb the equities as per the order dated August 10, 1994. If the defendant puts up construction it would amount to change of status quo and disturbing the equities.
- (4) Any order that may be passed by this Court now would still be an interlocutory order as far as the suit is concerned and, therefore, this Court should not pass any mandatory interim order permitting the defendant to put up construction on the land in question;
- (5) Granting of any permission to the defendant to

put up construction would amount to giving fresh lease to the defendant because permission granted by the plaintiffs in the year 1972 for the additional piece of land admeasuring 15 ft. x 30 ft. on which the defendant now seeks to put up construction was merely by way of grant of land appurtenant to the premises originally let out but once the Surat Municipal Corporation acquired the originally demised premises and demolished the shop in question, the so-called tenancy in respect of appurtenant land also lapsed and, therefore, the defendant has no right whatsoever now in respect of the land in question and that the defendant also ceased to be a tenant of the appurtenant land as soon as the originally demised premises were taken over by the Surat Municipal Corporation and the shop was demolished.

- (6) The topography of the place is such that if the defendant puts up construction on the land in question and if the Corporation refuses to open the wall on the front side of the land in question abutting on the public road, the defendant and his customers would have to enter the shop intended to be constructed by the defendant, through the land which is in possession of the plaintiffs.

17. Mr. P.M. Thakkar, learned counsel for the appellant-defendant has made the following submissions in support of defendant's application and for opposing the plaintiffs' application:-

- (a) The property has already vested in the Union of India and the defendant has been paying rent to the Union of India since July 1989. Even while admitting Special Civil Application No. 4437 of 1994 and passing the order of status quo this Court has not disturbed the aforesaid arrangement and, therefore, the Union of India has to be treated as the landlord and not the plaintiffs.
- (b) The defendant is already in possession of the land admeasuring 15 ft. x 30 ft. as per the letter which was issued by the plaintiffs as far back as on August 5, 1972 and, therefore, the defendant is not making any encroachment on any land but is only seeking to use the land which is

already in its possession for the last 25 years.

(c) The defendant is required to put up construction on the land in question only because the shop which was earlier constructed has been demolished by the Surat Municipal Corporation in the year 1996 for widening of the road in implementation of the Town Planning Scheme and, therefore, for carrying on his business the defendant needs to construct another shop on the land which was already granted to the defendant as far back as in 1972.

(d) The Estate Officer in Defence Department who has also been collecting rent from the defendant on behalf of the Union of India has already granted permission to put up construction on the land in question and the Surat Municipal Corporation has also sanctioned the necessary plans for the same in 1996 and, therefore, defendant cannot be obstructed by the plaintiffs when he is about to start the construction and put up the shop on the land in question.

(e) Once the trial court rejected application Ex.5 filed by the plaintiffs, the trial court ought to have granted interim injunction application filed by the defendant in the same suit. The trial court could not have dismissed both the applications.

Contention No.1:

18. As far as the question of the plaintiffs' claim to the title over the land (including parcel of land admeasuring 15 ft. x 30 ft.) is concerned, since Spl.Civil Application No. 4437 of 1994 (the writ petition) is pending in this Court, I do not propose to go into the merits of the plaintiffs' claim in that petition. If the petitioners fail in that petition, they would have no right to oppose the construction proposed to be put up by the defendant on the land in question, but if they succeed in that petition, they would certainly have a right to oppose the construction being put up by the defendant on the land in question. I have therefore heard Mr. Patel for the plaintiffs keeping in mind the possibility that the plaintiffs in the present suit might succeed in that petition. This assumption is, however, only for the limited purpose of giving the plaintiffs locus standi to make submissions for pressing their claim for interim injunction in their application

ex. 5 and this assumption is not to be treated as any finding in favour of the plaintiffs on the merits of their case which is the subject matter of that writ petition.

Contention No.2:

19. As far as the contention urged by Mr. Patel that the defendant had unsuccessfully approached this Court on as many as three previous occasions (by filing Civil Applications in the aforesaid writ petition) for the purpose of seeking permission to put up construction on the land in question is concerned, it is necessary to bear in mind that if the Court hearing those Civil Applications had at any time considered that the defendant's putting up construction on the land in question would amount to changing the equities and disturbing the order of status quo passed on August 10, 1994, this Court would have straightway rejected those Civil Applications on the ground that any construction being put up on the land in question would amount to disturbing equities and changing the status quo. Far from saying so, this Court left it open to the parties to seek permission from the concerned authorities in accordance with law without disturbing equities (order dated 6.12.95). Then again this Court has observed in order dated July 9, 1996 as under:-

"If permission for the construction is necessary from the Municipal Authority or Town Planning Authority, then those authorities will decide the question as to whether permission should be given or not. If permission of any other statutory is required for such construction, then it would be for the concerned parties to take such permission."

Further, this Court has observed in the last order dated February 13, 1997 as under:-

"Besides whatever construction is made would have to be in accordance with the permission which the applicant has been granted and this Court has very clearly stated in the earlier orders that the same would not defeat the equities of the parties. Besides, what has been submitted on behalf of the applicant-appellant (the defendant herein) would also clearly indicate that the construction would be provisional and would be subject to the result of all the proceedings."

In my view therefore, this Court not only

permitted the defendant to approach the concerned authorities for obtaining permission to put up construction on the land in question, but also contemplated the following safeguards while granting such liberty:-

"The equities would not be disturbed, if the construction would be provisional and would be subject to result of the proceedings".

Hence, the contention urged by Mr. Patel for the plaintiffs that, allowing the appeal would amount to setting at naught the orders passed in the abovementioned Civil Applications cannot be accepted.

The contention regarding competent authority is untenable in view of the fact that as far as the building plans are concerned, the Surat Municipal Corporation would be the competent authority as the land is within the limits of the Surat Municipal Corporation. As far as the Union of India in its Defence Ministry is concerned, the Defence Estate Officer has been carrying on the legal proceedings right from 1975 onwards collecting rent from 1989 onwards, and, therefore, it would be too late in the day to hold that the said officer is not the competent authority to grant permission for construction on the land in question. So also the statement in the receipts that they are provisional would not come in the way of construction coming up subject to the outcome of various proceedings and subject to the rights of the party whoever is held to be the landlord of tenant.

Contention No.3 & 4:

20. As far as the contention urged by Mr. Patel that the proposed construction would disturb the equities is concerned, in my view, if the interim injunction as prayed for by the defendant in his application is granted and the order rejecting the plaintiffs' application ex. 5 is confirmed subject to certain safeguards, the equities would not be disturbed and Mr. Thakker for the defendant also agrees that his client would abide by all the conditions that this Court may impose for ensuring that the equities would not be disturbed if the plaintiffs are restrained from obstructing the defendant in putting up construction on the land in question.

21. As far as the contentions urged by Mr. Patel that this Court should not pass any order which will have the effect of altering the status quo and would be in the nature of mandatory interim order in favour of the defendant during pendency of the suit is concerned, the

objection is misconceived for the following reasons:-

(i) When this Court admitted writ petition of the plaintiffs and passed order directing the parties to maintain status quo in August, 1994, the shop occupied by the defendant since 1951 and in any case, admittedly since 1964 was already there. Since thereafter the Surat Municipal Corporation has acquired the land (15' x 30') and demolished the said shop for the purpose of widening the road, if the defendant constructs another shop on the remaining land in question having same area (15' x 30') which is already in possession of the defendant since last 25 years, it would not mean that the status quo is being disturbed. On the contrary, granting interim injunction as prayed for by the defendant would only mean that the defendant will be in a position to restore ante the status quo as on the date of passing of the order by this Court in August, 1994, except for the location of the shop which would move backward on account of widening of the road.

(ii) For the same reason, granting interim injunction as prayed for by the defendant would not amount to granting any mandatory interim injunction as the defendant has already obtained permission for the proposed construction not only from the Surat Municipal Corporation, which is the competent local authority for the purpose of sanctioning such building plans, but also from the Defence Estate Officer of the Defence Department of the Union of India which authority has been accepting the rent from the defendant on behalf of Union of India since July 1989 and which authority has also been prosecuting the legal proceedings on behalf of Union of India before the Collector and the State Government since 1975 onwards. The only order that this Court now proposes to pass is to restrain the plaintiffs from obstructing the plaintiff in putting up construction on the suit land which is already in the defendant's possession since last 25 years.

(iii) Although technically this may be interim stage as far as the civil suit is concerned, it cannot be said that any factual investigation or inquiry is required to be made by the trial court before any relief can be granted in favour of or against the parties in the present suit. All that is required to be done at this stage is to balance the equities between the parties to the suit till the final decision of the writ petition.

(iv) Reliance placed by Mr. Patel on the decision in

the case of Nandan Pictures v. Art Pictures, 1956 Cal. 428 is misconceived. As stated above, granting the prohibitory interim injunction in favour of the defendant will only permit him to restore status quo ante as stated above.

Contention No.5:

22. As regards Mr. Patel's contention that once the Corporation demolished the shop and took over the land below the same in September, 1996, the adjoining land granted to the defendant in the year 1972 also ceased to be demised premises as it was merely an appurtenant land and once the tenancy in respect of the original demised premises comes to an end with demolition of the shop and acquisition of the land below the same, tenancy over the appurtenant land also comes to an end, this contention will be available to the plaintiffs only after the plaintiffs are held to be owners of the land in question if they succeed in the aforesaid writ petition and till then the plaintiffs' objections cannot be considered on merits. In any case, if the plaintiffs' succeed in the aforesaid writ petition, it will be open to them to press this contention before the Court hearing that writ petition for seeking appropriate directions for dealing with the construction now sought to be put up on the land in question which is likely to be put up before that writ petition comes up for final hearing. In the meantime, this Court proposes to impose certain conditions on the defendant subject to which the interim injunction as prayed for by the defendant be granted.

Contention No.6:

23. However, Mr. Patel is on firm ground while urging his last contention that even if the defendant puts up construction on the land in question, (i.e. the land admeasuring 15 ft. x 30 ft. with its frontage on the public road) the defendant should not be permitted to use any other portion of the land which is in possession of the plaintiffs.

Whether any amount should be deposited by the defendant ?

24. While it is true that the defendant has been paying rent for the land in question to the Union of India since July, 1989 and the said arrangement is not disturbed even when this Court admitted the writ petition of the plaintiffs and passed the interim order of status quo, and when the Estate Officer of Defence Ministry of Union of India, who has been prosecuting all the

proceedings so far before the Collector, as well as the State Government for revision, has also permitted the defendant to put up construction on the land in question prima-facie it may appear that it may not be necessary to impose any conditions other than the usual safeguards such as to make the proposed construction subject to the result of the above writ petition as well as the two suits pending before the trial court, but at the same time, in view of the contention raised by the plaintiffs to the effect that upon demolition of the shop and the acquisition of the original demised land by the Municipal Corporation in September, 1996, even the tenancy or license in respect of the additional land of 15 ft. x 30 ft. (which is the subject matter of the present litigation) would also come to an end and, therefore, the defendant may then be treated by the plaintiffs as a trespasser this Court has thought it fit to impose an additional condition on the defendant to deposit a monthly amount in the trial court which may ultimately be directed by the Court to be appropriated towards the mesne profits for the land in question over and above giving any other direction which the Court may think fit to grant at the time of disposal of the writ petition depending on the findings which it may then give. When a query was put to Mr. Thakker for the defendant he suggested that the defendant would be ready to deposit a sum of Rs. 500/- per month in the trial court without prejudice to his rights and contentions, whereas Mr. Patel for the plaintiffs submitted that he would not like to make any submission or suggestion on such score as it may be treated as acquiescence on the part of the plaintiffs or may be held out as an implied contract for fresh tenancy.

Having regard to the facts and circumstances of the case and the fact that the land abuts one of the main public roads in Surat and the construction is going to be used as business premises, this Court has thought it fit to fix such amount of deposit at Rs. 1500/- (Rupees One thousand five hundred) per month, which of course will be in addition to the rent of Rs. 95/- p.m. which the defendant must continue to pay to Union of India through the Defence Estate Officer.

25. In the result, the order passed by the learned trial Judge rejecting the plaintiffs' application ex. 5 deserves to be confirmed, and the interim injunction as prayed for by the defendant in his application deserves to be granted subject to the following terms and conditions:-

- (1) The defendant shall not put up any construction on any land except the land admeasuring 15 ft. x 30 ft. which was granted to the defendant as per the plaintiffs' letter dated August 5, 1972.
- (2) The defendant shall not put up any construction which is not in accordance with the building plans sanctioned by the Surat Municipal Corporation and also approved by the Defence Estate Officer of Union of India.
- (3) The defendant shall not claim any equity at the hearing of Special Civil Application No. 4437 of 1994 on the ground of having put up any construction on the land in question.
- (4) The construction which the defendant may put up on the land in question shall be subject to the result of Special Civil Application No. 4437 of 1994. The defendant shall abide by any direction which the Court hearing the writ petition may give while disposing of that petition including the direction, if any, for demolition of the construction on the land in question. (This condition is of course without prejudice to the defendant's right to carry in appeal any such adverse decision which may be given in the writ petition.)
- (5) The defendant shall not make any claim from the plaintiff or from the Union of India regarding the cost of construction on the land in question or the cost of demolition, if at all any such demolition is ordered by the Court at the time of disposal of the said writ petition.
- (6) The construction which may be put up by the defendant on the land in question shall also be subject to the result of Civil Suit Nos. 818 of 1996 and 940 of 1996.
- (7) The defendant, his agents/servants or customers shall not enter in any portion of the land other than the land admeasuring 15ft. x 30ft. which is in possession of the defendant.
- (8) The defendant shall deposit in the trial court, a sum of Rs. 1500/- (Rupees One thousand five hundred) every month w.e.f. 1st September, 1997 for making use of the land in question admeasuring 15ft. x 30ft. The amount for the

month of September, 1997 shall be deposited on or before 10th September, 1997 in the trial court. As and when such amount is deposited, the Nazir of the trial court shall open a recurring deposit account with a nationalized bank at Surat, in the name of the Nazir of the court A/c. of Civil Suit No. 818 of 1996 and Special Civil Application 4437 of 1997.

(9) Thereafter, for each subsequent month, the defendant shall deposit the aforesaid amount every month in such recurring deposit account on or before 10th day of each month e.g. the deposit for the month of October, 1997 shall be made in the said account on or before 10th October, 1997. The recurring deposit account shall be opened for a period of three to five years (as per the bank scheme for such deposits) and shall be continued till the disposal of the above writ petition. The defendant shall also give the Nazir of the court and plaintiff No.1 or their Advocate intimations at least on quarterly basis about such monthly deposits.

(10) The defendant shall file an undertaking before this Court on or before 10th September, 1997 to the effect that the defendant shall abide by all the aforesaid terms and conditions.

After the undertaking as aforesaid, is filed by the defendant, the plaintiffs-Bombay Diocesan Trust Association Pvt. Ltd., its trustees, office bearers, members, agents and employees are restrained from interfering with the defendant in putting up construction on the land admeasuring 15ft. x 30ft. which is the subject matter of the present suit being Civil Suit No. 818 of 1996 pending in the court of the Civil Judge (S.D.), Surat.

26. The appeal is accordingly allowed to the aforesaid extent. The order of the trial court, rejecting the plaintiffs' application ex. 5 is hereby confirmed and the appeal is allowed to the extent that the defendant's application for interim injunction in Civil Suit No. 818 of 1996 is allowed subject to the aforesaid terms and conditions, with effect from the date the defendant files undertaking as stated above.

27. As the appeal is disposed of, no orders on Civil Application No. 6761 of 1997, which also stands disposed of.

28. There shall be no order as to costs.

At this stage, Mr. Patel, learned counsel for the respondents-plaintiffs, requests the Court that the operation of this order be stayed for a period of four weeks to enable his client to have a further recourse in accordance with law. Mr. Karia, learned counsel for the appellant-defendant states that his client will not commence construction on the land in question till September 30, 1997. In view of this statement, no orders are required to be passed as regards Mr. Patel's request.

Amp/-